

APPEAL NO. 022021
FILED SEPTEMBER 30, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 2, 2002. The hearing officer determined that the compensable injury sustained by the appellant (claimant) on (first date of injury), does not extend to and include the cervical spine; that the claimant reached maximum medical improvement (MMI) on November 18, 2000; that the claimant's impairment rating (IR) is 13%; and that the respondent (carrier) did not waive its right to contest compensability of the claimed injury to the cervical spine. With the exception of the MMI determination, the claimant appeals the hearing officer's decision. The carrier urges affirmance.

DECISION

We affirm.

WAIVER

The hearing officer did not err in determining that the carrier did not waive the right to contest the compensability of the claimed injury to the cervical spine by not timely contesting extent of injury in accordance with Section 409.021. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.3(c) (Rule 124.3(c)), effective March 13, 2000, provides that Section 409.021 and the implementing provisions of this statute in Rule 124.3(a) "do not apply to disputes of extent of injury." As the preamble to the Rule notes:

Section 409.021 is intended to apply to compensability of the injury itself or the carrier's liability for the claim as a whole, not individual aspects of a claim.

The claimant contends that Rule 124.3(c) is invalid as it contradicts the plain meaning of Section 409.021(a). The Appeals Panel has previously held that it does not have authority to decide the validity of Texas Workers' Compensation Commission (Commission) rules. Texas Workers' Compensation Commission Appeal No. 980427, decided April 15, 1998. Texas Workers' Compensation Commission Appeal No. 980673, decided May 18, 1998, noted that administrative rules are presumed to be valid, that the burden of proving invalidity is on the party asserting invalidity, and that the courts are the proper forum for doing so.

EXTENT OF INJURY

The claimant urges that the issue of the compensability of the claimant's cervical spine should have been framed as follows: "Did [c]laimant suffer a compensable neck injury on (second date injury)?"¹ We first note that it was the claimant's choice whether

¹ Claimant apparently meant (first date of injury) rather than (second date of injury).

she wished to pursue a separate injury. However, the claimant agreed at the outset of the hearing that the proper issue for resolution was whether the compensable injury extended to and included the cervical spine. Accordingly, we perceive no error in the framing of the issue presented for resolution.

The claimant also asserts that “raw” extent-of-injury issues are not authorized under the Texas Labor Code and that the Commission has no authority to resolve such disputes as they involve medical, rather than compensability, questions. We disagree. The issue of whether medical treatment is reasonable and necessary does not arise unless and until a claimed injury has been determined to be eligible for medical benefits. Extent of injury is a question of fact for the hearing officer to determine at a contested case hearing. See Texas Workers' Compensation Commission Appeal No. 000301, decided March 29, 2000.

We have reviewed the complained-of determination regarding extent of injury and conclude that the issue involved a fact question for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determination is supported by the record and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

IR

After excluding impairment for the cervical spine, the designated doctor in this case certified that the claimant's IR is 13%. Given our affirmance of the determination regarding extent of injury, we also affirm the IR determination.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **HARTFORD UNDERWRITERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Margaret L. Turner
Appeals Judge